to turn from criminal ways to honest living. Our law does not, therefore, fix the sentence for a particular crime, but fixes a maximum sentence and leaves it to the Court to decide what is, within that maximum, the appropriate sentence for each criminal in the particular circumstances of each case. Not only in regard to each crime, but in regard to each criminal, the Court has the right and the duty to decide whether to be lenient or severe.

"It is for these reasons, and with these purposes in view, that before passing sentence the Court hears evidence of the antecedents and character of every convicted person. It follows that when two persons are convicted together of a crime or series of crimes in which they have been acting in concert, it may be right, and very often is right, to discriminate between the two and to be lenient to the one and not to the other. The background, antecedents and character of the one and his whole bearing in Court may indicate a chance of reform if leniency is extended, whereas it may seem that only a harsh lesson is likely to make the other stop in his criminal career."

I desire to emphasise the importance of Magistrates calling for evidence or information regarding the background, antecedents and character before passing sentence on a convicted person and of the prosecution making available as much information thereon as possible. A Magistrate should not hesitate to adjourn the case, if necessary, so as to ensure that he is fully informed on these matters. The Police may in some cases have difficulty in obtaining information in regard to an accused person, but it seems tc me that this is a matter upon which Probation Officers could be of assistance in the same way as they are in England.

As far as the case now before me is concerned my only information is that the appellant is a first offender of good character and has been in Government Service for eighteen years. Although, therefore, the sentence appears to me to be somewhat lenient in respect of an offence of corruption by a Government servant I am unable to say that it is wrong.

Appeal dismissed.

PUBLIC PROSECUTOR v. TAY TUAN.

[A. Cr. J. (Abbott, J.) December 3, 1952]

[Malacca — Criminal Appeal No. 21 of 1952]

Criminal Procedure Code (Cap. 21), ss. 182 and 427 — Procedure — When does a criminal trial commence?

Section 427 of the Criminal Procedure Code requires that a Chemist's Report intended to be used as evidence at a trial must be served not less than 10 clear days before the commencement of the trial. When this case was first mentioned no report has been served, but the report was subsequently served 10 clear days before the hearing.

Held: by section 182 of the Criminal Procedure Code, the accused when charged may either plead guilty or claim to be tried. His trial therefore does not commence until his claim has commenced to be met, i.e., on the day of the hearing.

CRIMINAL APPEAL.

D. C. Jackson (D.P.P) for the Public Prosecutor.

Respondent in person.

Cur. Adv. Vult.

Abbott, J. : — The respondent was charged before the Sessions Court with having been in the possession of opium. He was acquitted in the following circumstances. The prosecution sought to rely upon the certificate of the Government Chemist relating to the substance which was found in the possession of the respondent. The learned President held that the certificate was inadmissible in evidence because it had not been served upon the respondent "not less than ten clear days before the commencement of the trial", as required by section 427 of the Criminal Procedue Code (Cap. 21) of the laws of the Straits Settlements. The respondent was brought before the Sessions Court on 26th September last when his plea was taken; he "claimed trial" and the case was adjourned for the hearing of the evidence to the 20th of October. The certificate was served upon the respondent on the 6th of October, fourteen clear days before the hearing. The learned President held that the trial had commenced on the 26th of September and, from that, that the certificate had been served upon the respondent after the commencement of the trial. In the view of this Court the learned President was in error for the following reasons. The procedure of recording a plea in this country varies from the procedure followed in England. In England an accused person is called upon to plead and he is required to say whether he is guilty or whether he is not guilty — it could be argued that in England a trial commences when the accused is charged and before his plea is taken. By the laws of the Straits Settlements, section 182 of the Criminal Procedure Code, the accused has to be charged and he may either plead guilty or "Claim to be tried". It appears therefore that until the accused has claimed to be tried and his claim has commenced to be met, he has not begun to be on trial. In this case the accused claimed trial on the 26th of September and his trial commenced on the 20th of October, more than ten clear days after he had been served with the certificate. It might be that this is a proper case for ordering a fresh trial, but I am not prepared to do so since the learned Deputy Public Prosecutor has asked me for no more than a declaratory judgment upon the law. In these circumstances I feel justified in not making any order.

No order made.